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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)	CASE NO. CR 18-00081 CRB
)	
14 Plaintiff,)	JOINT BRIEFING RE SENTENCING
)	GUIDELINES CALCULATIONS
15 v.)	
)	
16 STEVEN BROWN,)	
)	
17 Defendant.)	
)	

1 **I. INTRODUCTION**

2 Prior to a hearing in the present case on August 28, 2019, Terry Kleid's lawyer presented a
3 victim impact statement to the Court. Through her civil lawyer, Kleid seeks to be heard at sentencing,
4 specifically on the issue of losses she alleges in a civil suit against Brown. The Court ordered that the
5 parties submit briefing as to whether the matters set forth in Kleid's letter to the Court impact the
6 sentencing calculations in this case. For the reasons discussed below, Kleid's claims do not impact the
7 Sentencing Guidelines calculations in the present case.
8

9 **II. STATEMENT OF FACTS**

10 Although she was interviewed by the FBI during their initial investigation of Mr. Brown, the
11 Government did not indict Mr. Brown for conduct involving Ms. Kleid, though did prosecute him for
12 harm caused to Home Owners Associations ("HOA's"). As Kleid's claims do not relate to the HOA
13 fraud alleged in the present case, Kleid's civil claim is markedly different from relevant conduct of the
14 crime of conviction.

15 Brown is charged by indictment with nine counts of wire fraud related to his unauthorized
16 withdrawal of funds from the accounts of numerous HOAs that he managed through his business, Better
17 Property Management between approximately December 2012 and April 2015. Brown plead guilty to
18 Count One of the indictment and admitted that he made unauthorized withdrawals from numerous
19 HOAs. The total loss to these HOA victims was \$230,496.58, which the parties agree is relevant
20 conduct for the purpose of sentencing. Although Brown has repaid \$134,560.22, his repayment lowers
21 restitution but does not reduce the amount of loss considered for the relevant conduct calculation.

22 In the letter submitted to the Court, Kleid refers to (1) a civil suit (San Francisco Superior Court
23 Case No.: CGC-16-553953) that she has filed against Brown concerning alleged fraud that is unrelated
24 to the scheme to defraud HOAs alleged in the Indictment, (2) allegations set forth in a California
25 Department of Real Estate's Accusation against Brown, (3) allegations regarding civil lawsuits filed by
26 other individuals against Brown for alleged fraud also unrelated to the scheme to defraud HOAs alleged
27 in the Indictment, (4) allegations by other individuals that Brown committed fraud against them that is
28 also unrelated to the scheme to defraud HOAs alleged in the Indictment.

III. MEMORANDUM OF POINTS AND AUTHORITIES

Relevant conduct is the range of conduct relevant to determining the offense level in the guidelines. It includes all acts or omissions of the defendant done in preparation for, during, or to avoid detection for the offense of conviction. U.S.S.G. 1B1.3(a)(1)(A). In fraud cases, relevant conduct also includes all acts of the defendant that were part of the same course of conduct or common scheme or plan as the offense of conviction. (U.S.S.G. 1B1.3(a)(2); 2B1.1; *United States v. Fine*, 975 F.2d 596, 600 (9th Cir. 1992).

When the scope of relevant conduct includes uncharged facts or conduct enhancing a sentence under Section 1B1.3(a)(2), the preponderance of the evidence standard of proof generally satisfies due process. *United States v. Restrepo*, 946 F.2d 654, 657-59 (9th Cir. 1991). However, if a case involves a severe penalty enhancement, due process may require heightened procedural protections. (*Id.* at 656 n.1, 659, 661.) *See e.g., United States v. Jordan*, 256 F.3d 922 (9th Cir. 2001) (aggregated nine-level sentence enhancements for firearm possession and abduction to facilitate escape be proven by clear and convincing evidence.)

Common Scheme or Plan

For two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose or modus operandi. U.S.S.G 1B1.3, Application note 5(B)(i). *See, e.g., United States v. Harder*, 116 F. Supp. 3d 1197 (D. Or. 2015) (all Assisted Living Facility investments sold by defendant, directly or indirectly by persons acting under his control, supervision, or direction to investors during two-and-a-half-year period, regardless of specific form of those investments, fell within common scheme or plan to defraud investors); *United States v. Valladares*, 544 F.3d 1257, 1268 (11th Cir. 2008) (separate health care fraud scheme involving nearly identical conduct was part of a common scheme or plan). Here, the government indicted Brown for conduct related to theft from HOAs. Kleid is an investor with rental properties in San Francisco, whose allegations do not involve HOA victims or accomplices common to the offense of conviction. The parties do not believe that Kleid's allegations constitute relevant conduct because they do not relate to the HOA fraud charged in the present case.

Same Course of Conduct

Offenses qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses. Factors relevant to this determination are the degree of similarity of the offenses, the regularity (repetitions) of the offenses, and the time interval between the offenses. When one of the above factors is absent, a stronger presence of at least one of the other factors is required. U.S.S.G 1B1.3, Application note 5(B)(ii). Applying these principles to the case at bar yields the same result as under the common scheme or plan analysis. The parties are in agreement that this case involves harm caused to HOAs by Brown, with a total loss of \$230,496.58.

IV. CONCLUSION

Given that the information Kleid presents in her letter does not bear upon the fraud scheme alleged in the present case, the information does not impact the Sentencing Guidelines loss amount calculation here. For the foregoing reasons, the parties submit that the accurate calculation of the loss is \$230,496.56, which yields a 10 point increase pursuant to U.S.S.G. Section 2B1.1(b)(1)(F).

DATED: November 15, 2019

Respectfully submitted,

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/s/
CHINHAYI COLEMAN CADET
Assistant United States Attorney

DATED: November 15, 2019

/s/
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